

**TAB 7**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

	x	
	:	
THE CITY OF HUNTINGTON,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01362
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

	x	
	:	
CABELL COUNTY COMMISSION,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01665
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

BENCH TRIAL - VOLUME 10  
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE  
UNITED STATES DISTRICT COURT  
IN CHARLESTON, WEST VIRGINIA

MAY 14, 2021

1 but in light of the fact that we are putting our witness --  
2 their witness -- I'm sorry -- our witness in their case, we  
3 simply don't know the scope and extent to which current  
4 information would be discussed.

5 So, we have discussed this proposal with the plaintiffs  
6 and my understanding is that they do not agree that we could  
7 make specific requests for the documents not to be broadcast  
8 to the overflow room or request sealing of specific portions  
9 of testimony or specific documents subsequent to today's  
10 testimony.

11 THE COURT: Do we have the ability to do this? We  
12 do?

13 Okay. Mr. Farrell?

14 MR. FARRELL: Thank you, Judge. On behalf of the  
15 plaintiffs, we object to -- this is open court and we object  
16 to the sealing of any document or any testimony in a public  
17 nuisance case brought on behalf of the public to abate this  
18 epidemic. That's point number one.

19 Point number two, we don't know what documents they're  
20 referencing because the Court has not required the  
21 defendants to disclose what documents they're going to use  
22 with these witnesses.

23 Number three, discovery in this case was blocked -- not  
24 blocked. That's the wrong word. There's a temporal scope  
25 to discovery in this case. On the back end, it was 2006 and

1 I believe on the front end, it was as of time of remand  
2 sometime in 2019. So, for purposes of discovery  
3 disclosures, we have not conducted any discovery nor been  
4 permitted to conduct any discovery on the current scope of  
5 their program.

6 And, finally, on the relevance standpoint, eliciting  
7 testimony about current customers or current OMP programs,  
8 we fail to see how it has anything to do with the flood of  
9 pills that were sold into West Virginia, into this  
10 community, giving rise to the opioid epidemic.

11 MS. MCCLURE: May I respond? Your Honor, certain  
12 of the documents that I'm thinking of today would be  
13 documents that have been produced to plaintiffs that are in  
14 the record covered by the discovery period, which ends, I  
15 honestly don't recall, sometime 2018 or 2019.

16 That said, some of the information within those  
17 documents, despite the fact that it may be from 2018, would  
18 still today be considered confidential by the company. And,  
19 to be clear, this is confidential because the purpose of the  
20 Diversion Control Program is, in fact, to protect the  
21 public.

22 The second point that Mr. Farrell was making regarding  
23 relevance, the plaintiffs have articulated in this case that  
24 they are seeking an abatement-only forward-looking remedy.

25 So, Mr. May's testimony today, Mr. Farrell is free to

1 stand up and object to the extent that he believes that the  
2 testimony is information that he was -- I believe he used  
3 the word prevented from obtaining in the course of  
4 discovery, but Mr. May is the present -- the present -- the  
5 Vice President of Diversion Control. The plaintiffs are  
6 seeking a forward-only abatement remedy and the current  
7 state of the program, regardless of whether the plaintiffs  
8 are choosing to focus in their examination on far distant  
9 past and the fact that, what they call the number of pills  
10 that were submitted long ago, the fact that they're choosing  
11 to focus on that does not prevent us from pointing out to  
12 Your Honor what is our Diversion Control Program today.

13 They're calling this witness, Mr. May. He currently  
14 operates the Diversion Control Program. We're entitled to  
15 mount a defense to that.

16 But, to be clear, the documents that I'm talking about  
17 showing or potentially broadcasting and would have  
18 confidentiality concerns are documents that the plaintiffs  
19 have.

20 THE COURT: Let me make sure I understand you.  
21 You're saying this is confidential customer information that  
22 shouldn't be disclosed?

23 MS. MCCLURE: So it's not necessarily information  
24 of the customer. It is in the sense that we have -- let me  
25 give you an example -- parameters that are set for each